IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE THIRTEENTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI DEVINDER GUPTA,THE CHIEF JUSTICE

and
THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 12015 of 2004

Between:

M/s Gangothri Metal Industries, rep. by its Managing Partner,
Sri C. Mahesh Kumar S/o C. Poorna Rao, aged 32 years, R/o Plot No. 19,

Seethapathi Colony, West Marredpally, Secunderabad.

..... PETITIONER

AND

1. A.P. Pollution Control Board, Zonal Office, Hyderabad, VI Floor, Collectorate

Buildings, Nampally, Hyderabad, rep. by its Joint Chief Environmental Engineer.
2 The A.P. Pollution Control Board, rep. by the Member Secretary, 2nd Floor,
HUDA Complex, Mythrivanam, Ameerpet, Hyderabad-16.
3 The A.P. Transco, N.P.D.C.L, (OP), rep. by its Superintendent Engineer, R.R.

Circle, Ranga Reddy District.
4 The Appellate Authority under Prevention & Pollution Control Act, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order or writ one in the nature of writ of Mandamus, declaring the action of the respondent in Closure Order No. 408/PCB/TF-HYD/2004-2005 , dt. 6-7-2004 as arbitrary, illegal, unjust and in violation of principle of natural justice and consequently call for the records and set aside the Closure Order No. 408/PCB/TF-HYD/2004-05 , dt. 6-7-2004

Counsel for the Petitioner: SMT.N.SHOBA

Counsel for the Respondent Nos.1 and 2: MR.S.V.BHATT

Counsel for the Respondent No.3: Smt. M.Vinobhadevi

The Court made the following Oral Order: (per Sri Devinder Gupta, CJ)

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On Lunch Motion being moved, this writ petition has been taken up.

On 6.7.2004, Respondent No.1 passed closure order after show cause notice dated 16.6.2004 was served on the petitioner pursuant to inspection carried out on 2.6.2004 and after hearing the petitioner on 24.6.2004.

Petitioner's case is that pursuant to show cause notice, petitioner has rectified the deficiencies which were pointed out by the Board on 25.6.2004. Despite the said fact, the impugned order came to be passed 6.7.2004. Appeal against the said order is stated to have been preferred before the appellate authority. But the same has not been taken up for consideration in the absence of there being any Presiding Officer.

From the record, it appears that on 24.6.2004, it was not brought to the notice of the Board that deficiencies had been rectified. Learned counsel for the petitioner submits that show cause notice itself was received late and seven days time was allowed to the petitioner to rectify the defects. On 24.6.2004, there was still time left with the petitioner to rectify the defects and the deficiencies were not rectified within the prescribed period.

The show cause notice itself had given seven days time to the petitioner from the

date of receipt thereof to rectify the defects and as per the version of the petitioner show cause notice was received on 24.6.2004 itself. Copy of reply to show cause on record is 25.6.2004 and it makes a reference to the show cause notice in the subject, but, the date therein is shown as 28.6.2004 and apparently there is a mistake. The date cannot be 28.6.2004. But it has to be any date on or after 20.6.2004. Endorsement thereupon of receipt is definitely 25.6.2004.

Show cause Notice itself makes a reference to the Analysis report of the analyst. Copy of the said report accompanying the show cause notice is served upon the petitioner. The said Analysis report itself was issued on 18.6.2004. Therefore, prima facie, we are of the view that the show cause notice must have been received by the petitioner on or after 20.6.2004. Be that as it may, petitioner had seven days time to rectify the defects and in case if we take the date of service of notice as 28.6.2004, the reply could not have been submitted prior to 28.6.2004 and as per the endorsement, reply was received by the Board on 25.6.2004. Therefore, it was not permissible for the Board to have passed the final order without carrying out the fresh inspection and only on fresh inspection final order could have been passed.

Consequently, we allow the writ petition and set aside the order dated 6.7.2004 of the 1st respondent with a direction to the 2nd respondent to carry out fresh inspection in accordance with law within a period of one month from the date of receipt of this order and thereafter to pass appropriate orders after affording opportunity of hearing to the petitioner.

In view of the order dated 6.7.2004 of the 1st respondent, power supply has been disconnected to the petitioner's unit. Hence, we direct the 3rd respondent to restore electricity supply to the petitioner's unit forthwith.

The writ petition is accordingly allowed. No costs.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER.

Pnb

To

1. The Joint Chief Environmental Engiener, A.P. Pollution Control Board, Zonal Office, VI Floor, Collectorate Buildings, Nampally, Hyderabad.

2 The Member Secretary, The A.P. Pollution Control Board, 2nd Floor, HUDA Complex, Mythrivanam, Ameerpet, Hyderabad-16.

3 The Superintendent Engineer, The A.P. Transco, N.P.D.C.L, (OP), R.R. Circle,

Ranga Reddy District.

4 The Appellate Authority under Prevention & Pollution Control Act, Hyderabad.

5. Two C.D. Copies